

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Confirmation No.: 4274
Lionel CASSIN <i>et al.</i>	Art Unit: 2426
Appln. No.: 09/912,408	Examiner: Fred H. Peng
Filed: July 26, 2001	Atty. Docket: 15235.007
For: Devices, Methods and a System for Implementing a Media Content Delivery and Playback Scheme	

Pre-Appeal Brief Request for Review

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request review of the present Office Action, which was mailed on December 18, 2008. No amendments are being filed with this request. A Notice of Appeal accompanies this request.

Independent claim 148, and therefore corresponding dependent claims 149-157, call for, *inter alia*, enabling playback of media content at a predetermined time after a step of receiving media content, wherein the enabling is carried out by a processor based device, yet the applied portions of the relied upon reference do not disclose or otherwise teach such elements.

The Examiner rejected the aforementioned independent claim as being unpatentable over Hunter *et al.*, U.S. Publication No. 2002/0056118, (hereinafter "Hunter"). As to claim 148, the Examiner alleges that "enabling the playback of said media content at a predetermined time after said step of receiving media content" is taught by paragraph 13; lines 38-42 of Hunter, which the Examiner summarizes as "said playback is only enabled when get [sic] special discount on daily or weekly basis after media content is received and recorded." *Office Action* page 3. Paragraph 13; lines 38-42 of Hunter actually states: "The present invention also provides the ability to

update movie pricing at any time, for example on a daily, weekly or monthly basis, so that consumers can choose to view movies at times when content providers offer pricing specials or incentives” (emphasis added).

The Examiner further alleges that “wherein said enabling is carried out by a processor based device” is taught by Figure 2 of Hunter, which the Examiner summarizes as “said enabling of media content is eventually carried out by a processor based device as shown in FIG.2 once selected by the user.” *Office Action* page 3. Figure 2 is simply a schematic of a “user station.”

Hunter does not teach enabling the playback of said media content at a predetermined time after said step of receiving media content, wherein said enabling is carried out by a processor based device, as recited in claim 148. Regarding the cited portion of paragraph 13, it appears that the Examiner is relying on the consumer's ability to play or not play a particular movie once it is available on the device to assert that Hunter teaches the elements of claim 148. This is incorrect for at least two reasons.

First, the cited portion of paragraph 13 specifically states that “consumers can choose to view movies at times when content providers offer pricing specials or incentives” (emphasis added). By virtue of giving the customer the choice to view movies at times when content providers offer pricing specials or incentives, playback must already be enabled prior to that time (or else there would be no choice for the consumer). Therefore, the cited section cannot teach the step of “enabling” as recited in claim 148.

Second, claim 148 specifically contains the limitation that “said enabling is carried out by a processor based device.” Therefore, even if, *arguendo*, the ability of a consumer to choose to view movies at certain times could be considered to be the step of “enabling,” claim 148 specifically requires that “said enabling” be carried out “by a processor based device” (*i.e.* not a consumer). As such, the cited portion of paragraph 13 cannot teach the step of “enabling” as recited in claim 148. Furthermore, Figure 2 does not supply the deficiencies of paragraph 13.

For at least the reasons noted above, Applicants respectfully submit that Hunter does not anticipate claim 148. Because independent claim 148 is not anticipated by Hunter, Applicants submit that dependent claims 149-157 also are not anticipated by Hunter.

In view of the foregoing remarks, reconsideration of the 35 U.S.C. §102(e) rejections is respectfully requested. Applicants further respectfully submit that the application is in condition for allowance, and request that a Notice of Allowance be issued as soon as possible.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Danielle Edwards".

David R. Marsh (Reg. No. 41,408)

Leslie L. Jacobs, Jr. (Reg. No. 40,659)

Danielle M. Edwards (Reg. No. 51,645)

Date: June 17, 2009

ARNOLD & PORTER LLP

Attn: IP Docketing Dept.

555 12th Street, N.W.

Washington, D.C. 20004

202-942-5000 telephone

202-942-5999 facsimile